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CINCPAC FOR FPA AND JICPAC
STATE FOR EAP/ANP AND EEB/IFD/OIA
TREASURY FOR OASIA
SINGAPORE FOR IRS
PARIS FOR USOECD
USDOC FOR 3132/USFCS/OIO/EAP
USDOC FOR 4530/MAC/EAP
USDOC FOR 6904/TIC/ASIA AND PACIFIC
STATE PASS USTR FOR WEISEL/BELL

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SUBJECT: 2009 INVESTMENT CLIMATE STATEMENT - AUSTRALIA

¶1. Following is the 2009 Investment Climate Statement for Australia. Note that the exchange rate between the US and Australian dollars fluctuated very widely over the year 2008; we have used the exchange rate as of January 21, 2009 (A\$1 = US\$.66) throughout.

A.1. OPENNESS TO FOREIGN INVESTMENT

¶2. The Australian Government welcomes foreign investment, and the United States is the country's largest source of foreign capital. Total U.S. investment in Australia, including both direct and portfolio investment, was A\$446 billion (US\$ 294 billion) in 2007. This accounted for about 27% of total foreign investment in Australia. Australia's foreign investment policy, as laid out in its general investment guidelines, is: "to encourage foreign investment consistent with community interests. In recognition of the contribution that foreign investment has made and continues to make to the development of Australia, the general stance of policy is to welcome foreign investment. Foreign investment provides scope for higher rates of economic activity and employment than could be achieved from domestic levels of savings. Foreign direct investment also provides access to new technology, management skills and overseas markets."

¶3. Takeovers of domestic firms by foreign investors, while sometimes generating nationalistic public reaction, are generally not interfered with, and are treated under the same guidelines as any other investment. There are no prohibitions on overseas investment or capital repatriation.

a) The Foreign Investment Review Board

¶4. The Federal Department of the Treasury regulates foreign investment through the Foreign Investment Review Board (FIRB) whose secretariat sits within the Treasury. The Board screens investment proposals for conformity with Australian law and policy. Regulation of foreign investment is based on the Foreign Acquisitions and Takeovers Act, (FATA) 1975 and the Foreign Acquisitions and Takeovers Regulations 1989. A full statement of Australia's foreign

investment policy can be found at: <http://www.firb.gov.au>

¶5. The investment screening mechanism administered by the FIRB tracks foreign investment developments through a notification system. If certain criteria are present, specific proposals are examined. Under the Free Trade Agreement between the U.S. and Australia (AUSFTA), which entered into force on January 1, 2005, separate and more generous investment criteria and thresholds now apply to U.S. investors.

¶6. Under the AUSFTA, Australia has committed to further liberalization of its foreign investment regime, as it applies to U.S. investors, while preserving the main feature of that regime, namely the ability to ensure that significant U.S. investment proposals are in the 'national interest'. The following changes to Australia's foreign investment policy were agreed under the AUSFTA:

- exemption from the FATA of acquisitions in financial sector companies, as defined by the Financial Sector (Shareholdings) Act 1998;

- the operation of a screening threshold of A\$953 million (US\$ 629 million), indexed annually to the GDP implicit price deflator, of acquisitions in Australian businesses in non-sensitive sectors;

- the operation of a screening threshold of A\$110 million (US\$73 million), indexed annually to the GDP implicit price deflator, of acquisitions in Australian businesses in defined sensitive sectors. The sensitive sectors are:

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- media;
- telecommunications;
- transport (including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia);
- the supply of training or human resources, or the manufacture or supply of military goods or equipment or technology, to the Australian Defense Force or other defense forces;
- the manufacture or supply of goods, equipment or technology able to be used for a military purpose;
- the development, manufacture or supply of, or the provision of services relating to, encryption and security technologies and communications systems; and
- the extraction of (or holding of rights to extract) uranium or plutonium or the operation of nuclear facilities;

- the operation of a minimum screening threshold of A\$110 million (US\$73 million), indexed annually to the GDP implicit price deflator, for acquisitions by entities in which the United States Government has a prescribed interest;

- the operation of a screening threshold of A\$953 million (US\$629 million), indexed annually to the GDP implicit price deflator, for acquisitions in non-residential developed commercial property; and

- removal of existing policy-based screening requirements for the establishment of new Australian businesses other than where the investment involves the United States Government.

¶7. The FIRB must be notified of investment proposals in the following categories:

- Acquisitions of substantial interests (15% by a foreigner together with their associates or 40% in aggregate) in existing Australian businesses, the value of whose assets exceeds A\$100 million or where the proposal values the business at over A\$100 million. For U.S. investors a notification threshold of A\$953 million instead applies, except for investments in prescribed sensitive sectors or by an entity controlled by the U.S. Government, which are subject to an A\$110 million threshold. The FATA does not apply to investments by

U.S. investors in those financial sector entities that are subject to the operation of the Financial Sector (Shareholdings) Act 1998;

- plans to establish new businesses involving a total investment of over A\$10 million or more. Proposals by U.S. investors, except an entity controlled by a U.S. Government, do not require notification but remain subject to other relevant policy requirements;

- portfolio investments in the media of 5% or more, and all non-portfolio investments irrespective of size;

- takeovers of offshore companies whose Australian subsidiaries are valued at A\$200 million (US\$132 million) or more, or the applicable U.S. investor threshold of either A\$953 million (US\$629 million) or A\$219 million (US\$145 million);

- direct investments by foreign governments or their agencies, irrespective of size;

- acquisitions of interests in urban land that involve:

- developed non-residential commercial real estate, where the property is subject to heritage listing, valued at A\$5 million or more and the acquirer is not a U.S. investor;

- developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at A\$50 million or more, or A\$953 million (indexed) for U.S. investors;

- vacant urban real estate regardless of value;

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- residential real estate regardless of value; and

- proposals where any doubt exists as to whether they are notifiable.

18. The FIRB uses a national interest test to examine foreign investment proposals. Proposals are evaluated according to their consistency with existing government policy and law, where these are taken to define important aspects of national interest (for example, competition policy and environmental laws). Also, national security interests and economic development priorities are considered. However, it is the Federal Treasurer, under the authority of the FATA, who ultimately decides whether or not an investment is contrary to the national interest.

19. The 2007-08 FIRB annual report will be released in February 2009. During FY 2007 (from July 1 2006 to June 30 2007) 6157 proposals received approval, compared with 5186 the previous year, representing an increase of 19%. The real estate sector recorded 5614 approvals (18% higher than the 4755 approvals in 2005-06). There were 543 proposals approved in other sectors in 2006-07 compared with 431 in 2005-06, an increase of 26%. In 2006-07, 27 proposals, all concerning real estate, were rejected, compared with 25 in 2005-06.

110. Approvals in 2006-07 involved proposed investment of A\$156.4 billion (US\$103 billion). This was an 82% increase on the previous year's approvals of A\$85.8 billion (US\$56 billion). The manufacturing sector was the largest industry sector by value, with investment approvals in 2006-07 of A\$62.8 billion (US\$41 billion), compared with A\$13.7 billion (US\$9 billion) in 2005-06. The other major sectors for approvals in 2006-07 were: mineral exploration and development, A\$32.3 billion (US\$21 billion); services, with investment approvals of A\$28.9 billion (US\$19 billion); and real estate, with approved investment proposals valued at A\$21.4 billion (US\$14 billion). Disapproved investments were negligible.

111. The U.S. was again the largest source country for foreign investment in 2006-07, involving proposed investment of A\$45.3 billion (US\$30 billion) representing 29% of total approved proposals. Singapore (12%), Mexico (11%), the United Kingdom (9%)

and the Netherlands (8%) were the other major sources of proposed investment approved during 2006-07. The ranking of several of these countries again reflects the presence in the statistics of a small number of large value transactions rather than them being a generally prevalent and large overall source of investment in Australia.

b) Sector-specific regulation

¶12. Media: Australia's current media framework, which relaxed foreign and cross-media ownership restrictions, was passed in 2006 and took effect in 2007. Under this framework, some restrictions were removed, but media industry remains a sensitive sector under the Government's foreign investment policy. Cross-media ownership is permitted subject to safeguards that no less than five independent voices remain in metropolitan markets and four in regional markets. Voices remain in metropolitan markets and four in regional markets. The Rudd Government has not indicated a radical change of direction in relation to media ownership policy.

¶13. Civil Aviation: Foreign investors (including foreign airlines) are subject to more stringent requirements than the standard limit of 49% of the equity in an Australian international airline. In the case of Qantas, existing statutory ownership restrictions imposed when it was privatized (under the Qantas Sale Act 1992) are still in place. These limit total foreign ownership of Qantas to 49%, ownership by foreign airlines in aggregate to 35%, and ownership by an individual (including a foreign carrier) to 25%, although the Government, in its December 2008 Aviation Green Paper, has said it would consider removing the latter two caps. Under existing bilateral aviation agreements, the limit of 49% in any Australian

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international carrier is based on the commercial risk that such a carrier's ownership structure could see it denied access to a foreign market. In relation to the domestic carrier market, foreign investors (including foreign airlines) can generally expect approval to acquire up to 100% of a domestic carrier (other than Qantas), or establish a new domestic aviation operation, unless this is contrary to the national interest.

¶14. Airports: Foreign investment proposals for acquisitions of interests in Australian airports are subject to examination in accordance with the standard notification requirements outlined above. In relation to the airports offered for sale by the Australian Government, the Airports Act of 1996 stipulates a 49% foreign ownership limit, a 5% airline ownership limit and cross ownership limits between Sydney airport (including Sydney West) and Melbourne, Brisbane and Perth airports apply.

¶15. Telecommunications: Prior approval is required for foreign entry into the telecommunications sector or for investment in existing businesses in the sector. In 2006, the Government sold down its majority shareholding (51.8%) in the leading telecommunications company Telstra to around 18% following a successful share offer. The remaining 18% shareholding was transferred to the Future Fund (see paragraph below), a fund established since the Government achieving a net asset position in 2005-06. Aggregate foreign ownership of Telstra is still restricted to 35% of the privatized equity and individual foreign investors restricted to a holding of no more than 5% of that privatized equity.

¶16. Real Estate: Foreign persons wishing to acquire an interest in urban land require foreign investment approval (unless exempt under regulation). Proposals that require approval include acquisitions of:

- residential real estate;
- vacant land;
- developed commercial property valued at A\$50 million (US\$33 million) or more (for commercial heritage listed properties the threshold is A\$5 million);

- residential and commercial leases where the likely term of the lease is more than five years (the term should include any right or option to renew the lease);

- any profit sharing arrangement held over urban land (unless the asset subject to the profit sharing arrangement is developed commercial property valued at less than A\$50 million or heritage listed commercial property valued at less than A\$5 million);

- shares in a company or units in a trust that holds more than half its total assets in urban land, except where the urban land owned would not normally require foreign investment approval (for example, developed commercial property with a value less than A\$50 million); or

- proposals where any doubt exists as to whether they are notifiable.

¶17. Proposals by foreign investors to acquire developed residential real estate are examined. They normally are not approved except in the cases of foreign companies buying residences for their Australian based staff on condition that they will sell or rent the Australian based staff on condition that they will sell or rent the property if it is expected to be vacant for six months or more.

CHANGE IN FOREIGN INVESTMENT POLICY ON REAL ESTATE

¶18. On 18 December 2008, the Government announced changes to foreign investment screening arrangements for acquisitions of residential real estate by foreign persons that streamlined notification and

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administrative arrangements. Changes of policy will come into effect immediately; those requiring changes to the Foreign Acquisitions and Takeovers Regulations 1989 will come into effect after the necessary amendments have been made (expected in February 2009). There are no changes to the Foreign Acquisitions and Takeovers Act 1975 (the FATA).

¶19. The main changes are: (1) foreign students resident in Australia are no longer subject to a A\$300,000 (US\$198,000) limit on the value of an established dwelling purchased as their principal place of residence; (2) acquisitions by foreign-owned companies, trust estates and non-resident foreign persons of single blocks of vacant residential land are required to build a dwelling within a period of 24 months (previously within 12 months and development expenditure of at least 50% of land cost); (3) the requirement that only 50% of new dwellings can be sold to foreign persons on an 'off the plan' basis has been removed provided developers market locally as well as overseas; and (4) foreign-owned companies can now purchase established dwellings for the use of their Australian based staff provided that they sell or rent the dwelling if it is expected to remain vacant for more than 6 months.

¶20. From February 2009, temporary residents will not be required to notify proposed acquisitions of an established dwelling for their own residence (not for investment purposes); any new dwellings; and single blocks of vacant residential land (other acquisitions of vacant land will require notification and will normally be approved subject to development within 24 months). The exemption will include acquisitions of property by temporary residents via their trust or Australian incorporated company. For more information on the FIRB, please visit its web site (<http://www.firb.gov.au/>).

c) Incentives for Investment

¶21. Incentives that are available to investors include:

- Research and development tax concessions for companies incorporated in Australia;

- The Pharmaceuticals Partnerships Program (P3) offers R&D incentive

grants to established companies in the pharmaceutical sector. Grants consist of payment of 30 cents per dollar spent on eligible increased R&D activities in Australia above a base level of activity.

- Venture capital tax concessions. Capital gains tax exemptions are available for non-resident investment in Australian venture capital. The exemptions apply to investors from the U.S., the U.K., Japan, Germany, France and Canada.

- The Invest Australia Supported Skills (IASS) program is designed to encourage international firms to choose Australia as a location for foreign direct investment by providing streamlined immigration arrangements for eligible employees of an international company that is considering making a significant or strategic investment in Australia.

- In November 2008, the Australian Government announced the Green Car Innovation Fund (GCIF) as part of the New Car Plan for a Greener Future. The A\$1.3 billion (US\$858 million) fund will provide assistance over ten years to design, develop and manufacture low-emission, fuel-efficient cars and components in Australia. Grants will be allocated through a competitive selection process that considers the innovative, technological, commercial and environmental merits of each proposal.

- The Tradex Scheme provides relief to persons or organizations through an up-front exemption from customs duty and GST on imported goods intended for export or to be used as inputs to exports. The Scheme removes the need to 'drawback' these charges after export.

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- The Retooling for Climate Change program is aimed at helping manufacturers improve their production processes, reduce energy use and cut carbon emissions. Through the program, grants will be available for initiatives such as investment in energy efficient tools, small scale co-generation plants and water recycling.

¶22. Hundreds of major foreign firms in most industry sectors invest in Australia. The Australian Federal and State Governments vigorously encourage investment by offering incentives to multinationals to set up regional headquarters for financial and other services, and manufacturing operations. In fact, Australian states often compete to secure an international firm's headquarters in its capital city. Aimed initially at attracting information technology companies, the campaign has widened in scope to include manufacturing and provision of financial and administrative services for the Asia-Pacific region. The Government touts the benefits of Australia's safe, stable business environment, skilled workforce, and lower facility site and operating costs in comparison to other regional centers, such as Singapore, Hong Kong and Taiwan. For more information on investment incentives see www.ausindustry.gov.au and www.investaustralia.gov.au

A.2 CONVERSION AND TRANSFER POLICIES

¶23. The Australian dollar is a fully convertible currency. The government does not maintain currency controls or limit remittance, loan and lease payments. Such payments are processed through standard commercial channels, without governmental interference or delay.

A.3 EXPROPRIATION AND COMPENSATION

¶24. Private property can be expropriated for public purposes in accordance with established principles of international law. Due process rights are established and respected, and prompt, adequate and effective compensation is paid.

----- A.4 DISPUTE SETTLEMENT PROCEDURES -----

¶25. The Free Trade Agreement between the United States and Australia establishes a dispute settlement mechanism for disputes arising under the Agreement. In the first instance disputes are to be settled through consultation between the parties. Where these consultations are not effective in resolving the dispute, the Agreement provides for an arbitral panel to consider the matter. The dispute settlement mechanism provides for compensation for breaches of the agreement, which may include requiring the breach to be corrected, trade compensation to be provided, or monetary compensation in lieu of trade compensation. The FTA does not allow private investors to directly challenge government decisions; however, individual investors are able to raise concerns about their treatment by the Australian Government with the United States Government (or vice versa).

¶26. Property and contractual rights are enforced through the Australian court system, which is based on English Common Law. There have been no investment disputes involving foreign companies in recent years. Australia is a member of the International Center for the Settlement of Investment Disputes.

¶27. Australia has an established legal and court system for the conduct or supervision of litigation and arbitration, as well as alternate dispute processes. The traditional approach to commercial dispute resolution involves litigation, arbitration and more modern methods of alternative dispute resolution. Australia is a world leader in the development and provision of non-court dispute

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resolution mechanisms. It is a signatory to all the major international dispute resolution conventions and has organizations that provide international dispute resolution processes.

Performance Requirements and Incentives to Support Local Industry Development

a) Selling to the Government

¶28. Australia has not signed the GATT/WTO Agreement on Government Procurement, which means that it is not bound by conditions prohibiting specification of locally made product in tenders. However, the Australian Government procurement policy framework is non-discriminatory. That is, potential suppliers will not be discriminated against on the basis of their degree of foreign affiliation. The Free Trade Agreement with the United States prohibits the use of local preference arrangements and offsets, except in certain circumstances. Notable exceptions to the rule include preferences applying to local small to medium sized enterprises (SMEs). At the Federal level, there is a minimum target of 10% SME participation in all government procurements. Non-discriminatory treatment applies to most central government departments and 33 central government enterprises. A number of items, mainly relating to military equipment procurement by the Australian Department of Defence, have been exempted from the Agreement. A number of entities of regional governments are also subject to the Agreement.

¶29. The non-discrimination principle applies above certain thresholds. For central government procurement, the thresholds are A\$87,000 (US\$57,000) for goods and services and A\$9.57 million (US\$6.3 million) for construction services. For regional government entities, the thresholds are A\$679,000 (US\$448,000) for goods and services and A\$9.57 million (US\$6.3 million) for construction services.

b) Special Arrangements for Information and Communications Technology (ICT):

¶30. The ICT Management Consultants multi use list (ICT MUL) was established to enable Australian Government agencies to improve the

quality of their ICT business case development and benchmarking, corporate governance, and ICT project management and delivery. A Multi-Use List (MUL) is a list of pre-qualified potential suppliers of nominated goods and/or services, who have satisfied the conditions for inclusion. A MUL is a procurement tool available under the Commonwealth Procurement Guidelines and is intended for use in more than one procurement process. Australian Government departments and agencies can require inclusion on an MUL as a condition for participation in an open tender or as the basis for selecting participants in a select tender process for nominated goods or services. Inclusion on an MUL does not guarantee any potential supplier that an agency will include them in a select tender process.

¶31. For ICT contracts of A\$20 million (US\$13 million) and above, Australian Government agencies subject to the Financial Management and Accountability Act 1997 (FMA Act) are to include a minimum Qand Accountability Act 1997 (FMA Act) are to include a minimum target level for SME participation ranging between 10-20% of the contract value, depending on the proportion of hardware and software/services (10% for hardware, 20% for software/services). This policy supplements the Commonwealth Procurement Guidelines target of a minimum 10% SME spend generally. Any SME participation stemming from ICT contracts of A\$20 million and above will count towards the achievement of the agency wide 10% target. All publicly available business opportunities relating to the central government are notified on the AusTender website. Businesses can register their interest profile on the site and will receive automatic notification of the latest opportunities. See the AusTender website for more information (<https://www.tenders.gov.au/federal/index.shtml>).

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A.5 PERFORMANCE REQUIREMENTS AND INCENTIVES

A.6 RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

¶32. As a general rule, foreign firms establishing themselves in Australia are accorded national treatment. They do not have to seek government permission to establish and own businesses unless their proposed activity meets tests established in law and regulation that trigger notification/review by the FIRB. These FIRB requirements are a matter of public record and are available upon application to FIRB.

¶33. Firms may, if they wish, seek "naturalization" (conversion to full Australian status, as opposed to foreign status). To be naturalized, a firm must be at least 51% Australian-owned; its articles of association must provide that a majority of its board be Australian citizens; and it must reach an agreement with the Government regarding the exercise of voting powers in respect of the firm's business in Australia. The only practical advantage of naturalization is relief from the requirement that the FIRB be notified of proposed investment activities. Australian law protects patents, trademarks, designs, copyrights and integrated circuit layout rights.

A.7 PROTECTION OF PROPERTY RIGHTS

¶34. Australia is a member of the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention, the Geneva Phonogram Convention, the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations, the Patent Cooperation Treaty, the WIPO Copyright Treaty 1996 (WCT), and the WIPO Performances and Phonograms Treaty 1996 (WPPT). The treaties protect copyright in the online

environment.

¶35. IP Australia is the Australian government agency responsible for registrations of patents, trademarks and designs. Contact details for IP Australia are: Tel: 61-2 6283-2999; Fax: 61-2 6283 7999; or <http://www.ipaustralia.gov.au/>. For copyright matters contact the Copyright Law Branch, Attorney-General's Department at: Tel 61-2 6250-6313; Fax 61-2 6250-5929; or at <http://www.ag.gov.au/>.

a) Patents, Trade Secrets, Designs:

¶36. Patents are available for inventions in all fields of technology and are the principal system for protecting ownership of any device, substance, method or process that is new or inventive. They are protected by the Patents Act of 1990, which offers coverage for 20 years, subject to renewal. An application for patent in Australia provides international priority rights if applications follow in overseas jurisdictions within 12 months.

¶37. In 2006, legislation aimed at preventing unauthorized access to material protected by copyright was passed by the Australian Parliament. The legislation implemented the technological protection measures scheme in the Australia-United States Free Trade Agreement (AUSFTA). Technological protection measures (TPMs) are technical locks, such as passwords or encryption, used by copyright owners to prevent unauthorized access to and use of their material. These laws complement other copyright reforms including measures to target piracy.

¶38. Under the United States-Australia Free Trade Agreement, the
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Australian government agreed to provide measures to prevent the marketing of a generic version of a pharmaceutical before the patent on that product expired. Australian regulations provide five years of protection of test data submitted to regulatory authorities for marketing approval of new pharmaceutical products and ten years of protection to undisclosed data submitted with an application for marketing approval for a new agricultural product, when that approval is given in combination with the marketing approval of certain additional uses of the same product.

¶39. Design features, such as shape or pattern, can be protected from imitation by registration under the Designs Act of 1906 for up to 16 years. An important aspect of a design is that it must be applied industrially. Registration cannot be granted for a design that is purely artistic. Only the owner of the design can make an application for registration.

b) Trademarks

¶40. Trademarks may be protected for ten years and renewed indefinitely, upon request by registration under the Trademarks Act of 1995. Once used, trademarks may also, without registration, be protected by common law; however registration with IP Australia does make enforcement easier. It is wise for any U.S. exporter intending to market a product in Australia to check with the Trademarks Office at IP Australia to ensure that its mark or name is not already in use.

c) Copyrights

¶41. Copyrights are protected under the Copyright Act of 1968, which has been amended by the U.S. Free Trade Implementation Bill 2004 and the Copyright Amendment Act 2004 and Copyright Amendment Act 2006, to meet the obligations of the U.S.-Australia Free Trade Agreement. Works do not require registration, and copyrights automatically subsist in original literary, artistic, musical and dramatic works, film and sound recordings. Copyright protection is for the life of the author plus 70 years. For sound recordings and films, protection is 70 years after publication. The Australian Copyright Act provides protection and against video piracy and unauthorized third-country

imports. Amendments to the original Copyright Act of 1968 contained in the Copyright Amendment Act 2006 are related to: time-shifting, format-shifting and space-shifting; certain non-commercial activities of libraries, educational institutions and cultural institutions; use of copyright by people with a disability; parody and satire; the Copyright Tribunal; technological protection measures; unauthorized reception of encoded broadcasts and criminal penalties.

A.8 TRANSPARENCY OF THE REGULATORY SYSTEM

¶42. Australia subscribes to the 1976 declaration of the Organization for Economic Cooperation and Development (OECD) concerning international investment and multinational enterprises. The instruments cover national treatment and investment incentives and disincentives, and spell-out voluntary guidelines for the conduct of Qdisincentives, and spell-out voluntary guidelines for the conduct of multinational enterprises in member countries. Australia also subscribes to two OECD codes of liberalization, one covering capital movements and the other invisible transactions.

¶43. Both Australian law and government practices foster transparency and favor competition. Taxation policy does not generally impede the efficient mobilization and allocation of investment, although there are a number of differences between the U.S. and Australian tax systems that have potential implications for business. Businesses are advised to seek counsel from accounting and law firms familiar with the tax policies of both countries.

¶44. The Australian Taxation Office and the Internal Revenue Service
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have a simultaneous audits agreement to investigate suspected non-compliance with tax laws of both countries. The U.S. - Australia Double Taxation Treaty affects business investment between the two countries. The Treaty, effective since 1983, applies to federal income tax of the U.S., excluding accumulated earnings tax, personal holding company tax and Australian income tax. Separate agreements apply to gift and estate taxes.

¶45. Australia and the United States revised the Treaty in September 2001 to provide a competitive tax treaty for companies located in Australia by reducing the rate of dividend withholding tax on U.S. subsidiaries and branches of Australian companies. The treaty revision also prevents double taxation of capital gains derived by U.S. residents from interests in Australian entities while retaining Australian taxation rights. The Controlled Foreign Corporation and Controlled Foreign Trusts legislation provides for taxing income that accrues to corporations or trusts, arranged after residency is established.

A.9 EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

¶46. Australia has a well-developed, deep and sophisticated financial market, regulated in accordance with international norms. The Australian stock exchange is the 8th largest in the world and the Australian dollar is the world's 6th most traded currency. In terms of global turnover, Australia's foreign exchange market is the seventh largest in the world, and the Australian dollar/U.S. dollar is the fourth most traded currency pair globally (BIS, Triennial Central Bank Survey in 2007). The stock and commodities exchanges have corresponding arrangements with other world exchanges. Credit is allocated on market terms and several foreign banks operate successfully in Australia.

A.10 POLITICAL VIOLENCE

¶47. As in all liberal democracies, political protests (e.g., rallies, demonstrations, marches, public conflicts between competing

interests) form an integral, though generally minor, part of Australian cultural life. Australian protests cover the broad range of current issues and interests: ethnic and aboriginal concerns, pro- and anti-right wing demonstrations, community and environmental issues and denunciations of government policies, to name a few. Such protests, while often vociferous, rarely degenerate into violence.

A.11 CORRUPTION

¶48. Australia maintains a thorough system of laws and regulations designed to counter corruption. In addition, the government procurement system generally is transparent and well regulated, thereby minimizing opportunities for corrupt dealings. Accordingly, corruption has not been a factor cited by U.S. businesses as a disincentive to investing in Australia, or to exporting goods and services here. Non-governmental organizations interested in monitoring the global development or anti-corruption measures, including Transparency International, operate freely in Australia. Australia is perceived internationally as having low corruption levels, as demonstrated by Transparency International's Corruption Perception Index 2008, which ranked Australia ninth, ahead of the U.K., Canada and the U.S. in terms of nations perceived as having low levels of corruption.

¶49. Australia is an active participant in international efforts to end the bribery of foreign officials. Legislation to give effect to the anti-bribery convention stemming from the OECD 1996 Ministerial Commitment to Criminalize Transnational Bribery was passed in 1999. Legislation explicitly disallowing tax deductions for bribes of

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foreign officials was enacted in May 2000. At the federal level, enforcement of anti-corruption laws and regulations is the responsibility of the Attorney General's Department.

¶50. The Australian Transaction Reports and Analysis Centre (AUSTRAC) aims to make the financial environment hostile to money laundering, the financing of terrorism, other major crime and tax evasion. AUSTRAC was established under the Financial Transaction Reports Act 1988 (FTR Act) and continues in existence under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) which authorizes the collection, analysis and dissemination of certain financial information to deter money laundering and terrorism financing, other major crime and tax evasion. The Attorney-General's department has continued to work on the second tranche of anti-money laundering and counter-terrorism financing reforms, which will extend the legislative regime to ensure that Australia's anti-money laundering and counter-terrorist financing framework complies with international standards set by the international Financial Action Task Force.

A.12 BILATERAL INVESTMENT AGREEMENTS

¶51. The Australian Government supports the negotiation of comprehensive Free Trade Agreements (FTAs) that are consistent with the World Trade Organization rules and guidelines and which complement and reinforce the multilateral trading system. Australia has Free Trade Agreements with the United States, Thailand, Singapore, Chile, and has reached agreement on a multilateral one with New Zealand and the countries of the Association of Southeast Asian States (ASEAN), all of which contain chapters on investment. See section A.1.a for details on U.S. specific investment arrangements. Australia also has a longstanding Free Trade Agreement with New Zealand called the CER (Closer Economic Relations). While this agreement does not contain a specific section on investment, both countries have undertaken significant liberalization of their investment regimes vis-à-vis the other party. Both countries agreed in early 2005 to investigate the possibility of adding an investment chapter to the agreement. Australia is currently negotiating agreements with the Gulf Cooperation Council (GCC), Malaysia, ASEAN,

China and Japan, all which are expected to contain undertakings relating to investment liberalization. In November 2008, Trade Minister Crean announced that Australia will participate in negotiations for a Trans-Pacific Partnership Agreement (TPP). The TPP will expand on the current Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand and Singapore, which entered into force in 2006. The United States and Peru have also announced their intent to join the TPP negotiation. In addition, Australia is considering entering FTA negotiations with Indonesia and India, and in December 2008 concluded preparatory talks with Korea.

A.13 OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

¶52. Australia provides foreign investment insurance to its firms investing abroad through the Export Finance and Insurance Corporation (EFIC). The U.S. Overseas Private Investment Corporation (OPIC) does not extend coverage to Australia, which is not a high-risk or developing country.

A.14 LABOR

¶53. Australia's unemployment rate stood at 4.5% in December 2008, seasonally adjusted, slightly up after reaching a 33-year record low earlier in the year. Unemployment is forecast to increase in 2009 due to the impact of the global financial crisis. As of September 2008, Australia had experienced 17 years of uninterrupted economic

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expansion underpinned by a gradual shift to more flexible labor market arrangements. The Rudd government is currently replacing the previous WorkChoices legislation; and in late 2008 introduced the Fair Work bill. This aims to create ten minimum conditions for employees and reinstate unfair dismissal protections. The Rudd government also plans to reduce the number of awards that govern the pay and conditions of millions of Australian workers, but has pledged not to disadvantage employees or increase costs for employers. Under the Fair Work bill, unions and employers will be required to enter genuine negotiations where there is majority support from workers.

¶54. In the year to August 2008, annual average weekly earnings in Australia grew by a sustainable 3.3%, above the core inflation rate of 5.0% for the year to September 2008. Real wages have grown by over 15% over the last ten years reflecting generally above-average productivity growth. A major economic challenge facing Australia in 2009 is the likely increase in unemployment due to the effects of the global economic crisis and the drop in global commodity prices.

¶55. In terms of industrial unrest, in the year ended September quarter 2008, 189.8 working days per thousand employees were lost due to strikes, an increase of 138% over the year to September 2007. The 172 industrial disputes during the year ended September 2008 were 21 more than in the previous year.

¶56. Other Federal laws set specific employment conditions. For instance, the Superannuation Guarantee (Administration) Act 1992 supplements Australia's pension system. This compulsory, defined-contribution pension fund differs significantly from the U.S. Social Security system since it is privately run, and firms and their employees choose which investment company or companies will administer the funds. From July 1, 2002, employers were required by law to contribute a minimum of nine% of each employee's base salary into that employee's superannuation account and employees can choose to make additional contributions. For more information on superannuation, see (<http://www.ato.gov.au/super/default.asp>.)

¶57. In 2001, the Government established the General Employees Entitlements Redundancy Scheme (GEERS), a taxpayer-funded insurance scheme, in response to growing community concerns about the loss of

employee entitlements after several companies collapsed. GEER is a basic payment scheme established to assist employees who have lost their employment due to the liquidation or bankruptcy of their employer and who are owed certain employee entitlements. The scheme covers capped unpaid wages, annual and long service leave, capped payment in lieu of notice and capped redundancy pay. Employees currently stand ahead of unsecured creditors, but behind lenders with fixed security in the creditors' queue following a company collapse.

¶58. The Australian Government is nominally a party to all International Labor Organization (ILO) conventions. The Government does not regard ratification of ILO conventions as a high priority.

----- A.15 FOREIGN TRADE ZONES/FREE TRADE ZONES -----

¶59. The Tradex Scheme allows an importer to gain an up-front exemption from Customs duty and GST on imported goods that are intended for export. The goods may be exported in the same condition as imported, subjected to a process or treatment after importation, then exported or incorporated in other goods which are exported. Export may be carried out by the importer or a third party. The goods must be exported within 12 months of importation, although approval can be sought to extend this period.

----- A.16 FOREIGN DIRECT INVESTMENT STATISTICS -----

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Levels of investment -----

¶60. The level of foreign investment in Australia increased by A\$201.8 billion (US\$133 billion) in 2007 to reach A\$1.66 trillion (US\$1.1 trillion) at 31 July 2008. Portfolio investment accounted for A\$1.01 billion (US\$667 million) (61%), direct investment for A\$377 billion (US\$226 billion) (23%), other investment liabilities for A\$206.8 billion (US\$136 billion) (12.5%) and financial derivatives for A\$69.4 billion (US\$46 billion) (4.2%). Of the portfolio investment liabilities, debt securities accounted for A\$628.7 billion (US\$45 billion) (62.5%) and equity securities for A\$377.8 billion (US\$227 billion) (37.5%). The leading investor countries at 31 July 2008 were as follows.

Country	Level of investment A\$ billions	Level of investment US\$ billions	percentage of total investment
United States	445.9	294	27
United Kingdom	410.4	271	25
Japan	57.5	38	3
New Zealand	42.8	28	3
Hong Kong SAR	41.7	28	3
Netherlands	34.3	23	2
Germany	31.6	21	2
Switzerland	30.0	20	2

¶61. The level of Australian investment abroad reached A\$987 billion (US\$651 billion) in 2007, an increase of A\$125 billion (US\$83 billion) on the previous year. Direct investment abroad accounted for A\$323.6 billion (US\$214) (33%), portfolio investment for A\$441.5 billion (US\$291 billion) (45%), other investment for A\$119.3 billion (US\$78) (12%), reserve assets for A\$30.5 billion (US\$20 billion) (3%) and financial derivatives for A\$72.1 billion (US\$48) (7%). Equity has been the main form of Australian investment abroad during the past decade. At A\$608.0 billion (US\$401), equity represented 62% of the total level of investment in 2007. The leading destination countries in 2007 were as follows.

Country	Level of investment A\$ billions	Level of investment US\$ billions	percentage of total investment
United States	403.4	266	40.9
United Kingdom	127.8	84	13.0
New Zealand	70.8	47	7.2
Germany	37.1	24	3.8
Netherlands	35.3	23	3.6
Japan	35.1	23	3.6

Flows of investment

Inflows

¶58. Foreign investment in Australia recorded a net inflow of A\$151.9 billion (US\$100 billion) for the year ended 31 December 2007, a decrease of A\$20.5 billion (US\$13 billion) over the previous year. The leading investor countries were the United States - A\$49.4 billion (US\$326 Billion) or 32.5%, the United Kingdom - A\$27.7 billion (US\$18 billion) or 18.2%, Japan - A\$8.7 billion (US\$ 6 billion) or 5.7%, Belgium - A\$6.2 billion (US\$4 billion) or 2.4% and Hong Kong - A\$3.6 billion (US\$2 billion) or 2%.
QHong Kong - A\$3.6 billion (US\$2 billion) or 2%.

Outflows

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¶59. Australian investment abroad recorded a net outflow of A\$125.5 billion (US\$ 83 billion) for the year ended 31 December 2007, a decrease of A\$44.9 billion (US\$ 30 billion). The leading destination countries were the United States - A\$62.2 billion (US\$41 billion) or 50%, Germany - A\$11.6 billion (US\$8 billion) or 9.2%, France - A\$9.5 billion (US\$6 billion) or 7.6% and Canada - A\$3.8 billion (US\$2 billion) or 3.1%. Portfolio divestment from Japan of A\$6.4 billion (US\$4 billion) occurred over 2007.

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